

Hon. William Giacomo
Westchester County Courthouse
111 Dr. Martin Luther King Jr. Blvd, Courtroom 1203
White Plains, New York 10601

Individual Part Rules

Staff

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I. GENERAL RULES

- A. Appearances: Counsel who appear before the Court must be familiar with the case and be fully authorized to enter into agreements on behalf of their clients. Counsel shall appear ready to discuss all matters, including settlement, at any scheduled appearance. Counsel and self-represented parties must be on time for all scheduled appearances.
- B. Settlements and Discontinuances: If an action or motion is settled, discontinued, disposed or withdrawn in any manner, counsel shall immediately inform the Court by letter or email and file the appropriate stipulation on the New York State Courts E-Filing system (hereinafter “NYSCEF”).
- C. Conduct of Parties and Counsel: All parties and counsel must conduct themselves appropriately in all proceedings and in their communications with each other and the Court. Personal attacks upon parties or counsel shall not be tolerated and may result in the imposition of sanctions as determined by the Court to be warranted under the particular circumstances.
- D. Communications: *Ex-parte* communications are strictly prohibited except upon consent of all counsel, or with respect to scheduling matters or the presentation of orders to show cause for signature. In addition, counsel must inform his/her client that under no circumstances shall any member of the Court’s staff engage in any conversation or exchange any communication with a represented party. Self-represented parties must not contact the Court’s Secretary or Law Clerk and must direct all communications through the Part Clerk.

II. MOTION PRACTICE RULES

A. E-Filing Rules and Protocol: All parties should familiarize themselves with the statewide E-Filing rules - Uniform Rule §§ 202.5-b and 202.5-bb [Rules & Legislation \(state.ny.us\)](#) and the Westchester County DCM Protocol. General questions about e-filing may be directed to the E-Filing Resource Center at (646) 386-3033 or efile@nycourts.gov. Specific questions about local procedures may be directed to the Civil Calendar Office at (914) 824-5300.

All cases that are subject to mandatory electronic filing must be filed electronically via NYSCEF. In an e-filed case, any submission to the Court, including a proposed order, proposed judgment or letter, must be filed electronically via NYSCEF. Counsel and self-represented parties are expected to keep their contact information updated in NYSCEF.

At this time, pursuant to Administrative Order (AO/267/20), working copies are not being requested.

Counsel should refer to E-Courts to determine if an appearance is required. Any questions about scheduling appearances on the motion, if any, or adjourning appearances must be directed to the Part Clerk.

B. Motion Calendars and Appearances: All motions or proceedings brought on by Notice of Motion or Notice of Petition must be made returnable before the Court on any Monday the Court is in session at 9:30 a.m. Personal appearances are not required on the return date. Papers not filed on NYSCEF by noon on the return date may not, in the Court's discretion, be considered.

Unless otherwise advised by the Court, all motions are by submission only. A request for oral argument may be made on the first page of the Notice of Motion, Order to Show Cause or answering papers. The Court will determine whether oral argument is appropriate, and counsel will be notified.

A request to appear before the Court on the return date should be e-mailed to the Part Clerk and if granted, a Microsoft Teams link will be sent to all parties. At the present time, all appearances will be virtual. If a party desires to appear in person, the request must be e-mailed to the Part Clerk. The Court will determine whether an in person appearance is appropriate, and counsel will be notified.

The parties MUST advise the Court if a case settles while a motion is pending. Failure to notify the Court of a settlement while a motion is pending will result in the imposition of sanctions.

C. Adjournments: Any party seeking an adjournment must attempt to obtain consent from all other parties. A motion may be adjourned on consent for a maximum of 60 days. If all parties consent to an adjournment, a stipulation signed by all parties must be promptly uploaded to NYSCEF. Any request for an adjournment that exceeds 60 days (Rule

202.8(e)(1) of the Uniform Rules for the Trial Courts) must be made by letter to the Court and uploaded to NYSCEF.

If consent was not obtained from all parties, on or before the return date a party seeking an adjournment must make such application in writing explaining the need for the adjournment and upload the application to NYSCEF. An application for an adjournment that is not properly supported will not be entertained, and the Part Clerk will mark the motion submitted.

Unless the Part Clerk, the Court's Secretary or the Court's Law Clerk has conveyed the Court's approval of an adjournment, no motion is considered to have been adjourned, including an adjournment on consent.

D. Orders to Show Cause and Requests for Temporary Relief: An Order to Show Cause submitted for signature must be uploaded to NYSCEF or presented to the office of the calendar clerk, after the payment of any required fee at the County Clerk's Office.

If an Order to Show Cause seeks temporary injunctive relief, counsel for the moving party or a self-represented moving party must demonstrate compliance with the notice requirements of Rule 202.7(f) of the Uniform Rules for the Trial Courts. A conference on the request for a Temporary Restraining Order, if required, will be conducted by the Court at a date and time set by the Court. Generally, an Order to Show Cause filed via NYSCEF is reviewed by the Court the business day after filing. If a submission requires more immediate attention, please contact the Law Clerk or Secretary after the Order to Show Cause is filed.

If the Court signs an Order to Show Cause, a copy of it will be uploaded to NYSCEF. If it is not an e-file case or the moving party has not opted into NYSCEF, the Court will email the signed Order to Show Cause to the moving party. A briefing schedule will be provided on the signed Order to Show Cause. No cross motion will be accepted absent prior permission of the Court or as specified in the Order to Show Cause. If appearances are required on the return date of the motion, the Court shall so indicate in the signed Order to Show Cause. Otherwise, no appearance is required, and no oral argument will be heard on the return date of the motion.

E. Communications Regarding Motions: All communications regarding motions, including requests for adjournments and questions concerning the status of motions, must be directed to the Part Clerk. If the Part Clerk is unavailable, the communication regarding a motion may be directed to the Law Clerk or the Court's Secretary.

F. Sur-Reply and Post-Submission Papers: Absent advance express permission from the Court, sur-reply papers and motion practice by correspondence are not permitted.

G. Length of Papers: Absent advance express permission from the Court, which will be granted only upon a showing of good cause, affidavits, affirmations, briefs and memoranda of law shall be limited to 7,000 words each pursuant to Rule 202.8-b of the

Uniform Rules for the Trial Courts. Reply affidavits, affirmations, and memoranda shall be limited to 4,200 words each. Papers submitted to the Court in violation of this rule may not be considered by the Court in deciding the motion.

III. TRIAL PRACTICE RULES

A. Trial Preparation: Prior to the commencement of a hearing or trial, counsel and any self-represented party must ascertain the availability of all witnesses and subpoenaed documents.

B. Interpreters and Special Services: Upon reporting to the Court for a hearing or trial, counsel and any self-represented party must immediately advise the Part Clerk if the services of a foreign language interpreter are required for any party or witness or if any special services are required for any party or witness who is hearing-impaired or who has any other disability. Similarly, the Part Clerk must be immediately informed if there is a need for a television, monitor or any other courtroom aid.

C. Pleadings and Submissions Due Immediately Upon Appearance: Immediately upon being assigned to this Court for a hearing or trial, counsel for each party, including the Law Guardian, if any, and any self-represented party must report to the Part Clerk in Courtroom 1203, or in his/her absence, the Law Clerk. Counsel or the self-represented party will be provided with a form to complete for the Court and shall submit the following:

1. A statement of the estimated length of the trial.
2. The party who filed the note of issue must submit to the Court copies of all pleadings marked as required by CPLR 4012 and a copy of the bill of particulars, if any.
3. A list of all witnesses who may be called at trial, including any known, potential rebuttal witnesses.
4. A list of all exhibits the party expects to use at trial, indicating whether such exhibits are stipulated for admission into evidence or are marked only for identification.
5. A written stipulation governing all facts that are not in dispute.
6. In all matrimonial actions, an updated net worth statement and a statement of proposed disposition.
7. A copy of any statutory provisions in effect at the time the cause of action arose, upon which any party to the action relies.
8. All expert witness reports relevant to the issues.

9. All reports, transcripts of examinations before trial and written statements which may be used either to refresh a witness' recollection or for cross-examination.

D. Marking of Exhibits: Counsel for all parties shall consult prior to trial and shall in good faith attempt to agree upon the exhibits that will be offered into evidence without objection. Counsel and any self-represented party must meet with the assigned Court Reporter to pre-mark all exhibits for identification. Any exhibits whose admission is agreed to by the parties must be pre-marked for admission, subject to Court approval. All exhibits not consented to shall be marked for identification only.

E. Conference: Immediately prior to the commencement of a hearing or trial, the Court will conduct a brief conference with all counsel to discuss preliminary matters. At this conference, counsel and any self-represented party must alert the Court to any anticipated motions *in limine* or evidentiary objections which will be made during the hearing and/or trial and must provide the Court with a copy of all prior decisions and orders which may be relevant to any applications *in limine* and/or objections.

F. Copies of Transcripts: If any part of a transcript of an examination before trial will be read as evidence-in-chief, the proponent of the transcript must provide a complete copy of it to the Court and all other counsel and/or self-represented parties, well in advance of the time that it shall be read, including citations to the page and line numbers for all portions to be read, so that all objections may be addressed by the Court prior to the proposed reading.

G. Copies of Exhibits: Upon the admission of an exhibit at a hearing or trial, the proponent of the exhibit must provide a complete copy to the Court.

H. Addressing the Court: Any counsel or self-represented party who is raising an objection, presenting an argument or otherwise addressing the Court, shall stand while doing so, or shall not be recognized by the Court. All objections shall be made by stating the word "objection", together with up to three more words identifying the generic ground for objection, such as "hearsay", "bolstering", "leading" or "asked and answered". If it is believed that argument on an objection is necessary, any counsel or self-represented party may ask permission to approach the bench. Keep in mind that any counsel or self-represented party will be given the opportunity to make a full record of his or her position.

I. Courtroom Behavior: All remarks shall be directed to the Court. Comments shall not be made to opposing counsel or self-represented parties. **PERSONAL ATTACKS UPON PARTIES OR COUNSEL SHALL NOT BE TOLERATED AND SHALL RESULT IN THE IMPOSITION OF SANCTIONS AS DETERMINED BY THE COURT TO BE WARRANTED UNDER THE PARTICULAR CIRCUMSTANCES.** Do not attempt to "talk over" an adversary; only one person shall speak at a time.

J. Use of Exhibits: Do not show anything, including an exhibit or proposed exhibit, to a witness without first showing it to all opposing counsel and self-represented parties.

If any counsel or self-represented party believes that this procedure will compromise his or her trial strategy, he or she shall first request a pre-offer ruling outside of the presence of the jury.

K. Summation Exhibits: Any counsel or self-represented party who intends during summation to use any type of demonstrative exhibit not marked into evidence must advise the Court and all other counsel and self-represented parties of that intention at the pre-charge conference. Failure to comply with this rule shall result in an order precluding the use of such exhibit during summation.

L. Examination of Witnesses: Do not approach a witness without permission of the Court. The questioning counsel or self-represented party shall allow the witness to complete his or her answer to a question before asking another question. Do not interrupt a witness in the middle of an answer unless it is totally unresponsive, in which event a ruling from the Court shall be requested.

M. Jury Charges: In all jury trials, a complete list of requests to charge with PJI numbers shall be submitted to the Court immediately preceding the commencement of trial, with copies to be provided to all other counsel and self-represented parties. Where deviations from, or additions to, the PJI are requested, the full text of such requests must be submitted in writing, together with any supporting legal precedents. In addition such proposals shall be submitted or emailed to the Court's law secretary at flmount@nycourts.gov. At the final charging conference, if marshaling of the evidence is required as to a particular jury charge, counsel and all self-represented parties shall provide the Court with the proposed facts which they believe should be presented to the jury.

N. Verdict Sheet: At the commencement of the trial, counsel for the parties and any self-represented parties shall jointly prepare a verdict sheet. If agreement cannot be reached, each party shall present a proposed verdict sheet which shall be served upon all other parties. The proposed verdict sheet(s) shall be submitted or emailed to the Court's law secretary at flmount@nycourts.gov.

O. Post-Trial Submissions: Unless otherwise directed by the Court, in accordance with the schedule set by the Court at the conclusion of a bench-trial or hearing, the parties shall jointly submit a trial transcript, and each party shall prepare and submit a post-trial memorandum. Factual arguments set forth in the memorandum shall be supported by citations to the trial transcript, and legal arguments shall be supported by citations to relevant statutes or case law.

In a matrimonial action, each party must also submit proposed Findings of Facts and Conclusions of Law and a proposed Judgment of Divorce. In the post-trial submissions following a trial of equitable distribution issues, each party must identify each item of property as either separate or marital and must state the value of each item of property. They must also identify all of the parties' outstanding debts as either separate or marital and must state the amount of each debt. All assertions as to the separate or marital status of each item of property and each outstanding debt and the value of each item of property

and the amount of each debt, must be supported by citations to the trial transcript.

P. Check-in: At the start of each day of trial, all counsel and self-represented parties shall check in with the Part Clerk so that he will be aware of your presence.

Q. Food and Drinks: **Absent permission of the Court obtained in advance, no counsel or party shall bring any beverage or food into the Courtroom. Water may be requested from the Clerk or a Court Officer during the trial, in which event only a cup of water as provided shall be permitted on the counsel table or the podium.**

R. No Communication with Jurors: In order to maintain the appearance of total impartiality, once the jury has been selected no one is to communicate in any form at any time with any juror. This prohibition includes both verbal and non-verbal communication, including, without limitation, nods, shrugs and shaking the head. Do not even say “hello” or “good morning”.

S. Trial Conclusion: At the conclusion of trial, counsel and any self-represented party are expected to e-file any exhibits admitted into evidence and any other document required to complete the record for purposes of any appeal. In addition, all materials used during the trial must be removed from the courtroom within 48 hours of the conclusion of trial. All materials not timely removed will be discarded.

T. COVID-19: In addition to the Individual Part Rules, this Court will follow the guidelines set forth by all orders from the Office of Court Administration with respect to COVID-19. Any person who appears in person must conform to all court operation guidelines, including, but not limited to, wearing a mask at all times and complying with social distancing rules.

IV. FAMILY COURT FACT FINDING HEARINGS/TRIALS

If a Family Court case is assigned to this part for Trial:

A. All counsel must be familiar with Judge Humphrey’s Part Rules. **No motions in a Family Court case are to be filed in this part.**

B. Trial Subpoenas: When subpoenas are directed to documents in the possession, custody or control of libraries, hospitals, and municipal corporations and their departments and bureaus, the subpoena notice must be “So Ordered” by the Court (“judicial subpoena”) pursuant to CPLR §§ 2306 and 2307 and then be served on the intended recipient at least three (3) days before the time fixed for the production of the documents, unless such notice is waived by the Court due to emergency circumstances as set forth in CPLR § 2307. The judicial subpoena must be served on all counsel and parties to the proceeding promptly after service on the witness, as required by CPLR § 2303(a). Any party wishing to obtain a judicial trial subpoena must move the Court on one (1) days’ notice to the person having custody of the record or document pursuant to CPLR §2302 (b) and must do so at least

seven (7) days prior to the scheduled fact-finding hearing, except in exceptional circumstances. Fact-finding hearings will not be adjourned for failure to comply with this provision, except for good cause. Motions for judicial subpoenas should be delivered to the Office of the Family Court Clerk at the Courthouse. The Court's issuance of a judicial subpoena does not constitute a ruling as to the admissibility of the subpoenaed materials.

C. Trial Notebook: No less than three (3) weeks before the first scheduled trial date on a matter, each party or counsel must file with the Court a "Trial Notebook" and provide a copy of that notebook to each attorney or unrepresented party to the matter.

The Trial Notebook shall consist of:

1. **Witness List.** The list shall identify the name, address and telephone number of the proposed witness and a brief statement, or offer of proof, as to why the witness is being called and to what the party expects the witness to testify. If a witness is not identified in the witness list provided to opposing counsel or party as part of the trial notebook, the witness may not be permitted to testify in a party's case-in-chief unless an adequate explanation is provided for the failure to identify such witness prior to trial. Fact witnesses and expert witnesses should be advised of the scheduled dates at the time the dates are set. Absent unanticipated, exigent circumstances, last minute claims of unavailability will not be accommodated where the trial dates have been previously set. All witnesses should be on one-hour phone call notice so that their waiting time in court is minimized. Professional witnesses, such as doctors, nurses and social workers, and witnesses who are public employees, such as teachers, counselors and police officers, will be permitted to testify out of order to accommodate their employment schedules. School teachers should be scheduled after 3:00 p.m. so that it is not necessary for their employers to provide substitutes. Rebuttal witnesses need not be listed.

2. **Exhibit List with copies of Pre-Marked proposed Exhibits.** The list shall enumerate all exhibits to be offered into evidence at trial by each party with a brief description of each exhibit and the "trial notebook" shall contain a copy of each proposed exhibit that the party/attorney intends to offer into evidence in support of his or her case-in-chief at trial. The parties/counsel shall make a good faith effort to resolve any disputes regarding admissibility of evidence and stipulate to the admissibility of as many exhibits as possible. Additionally, the counsel (or pro se litigants) will be required to appear for a pre-trial conference with the Judge's Court Attorney for the purpose of premarking exhibits, discussing stipulations that have been agreed upon between counsel/parties, and resolving as many remaining disputed evidentiary issues as possible. All exhibits expected to be used at a Fact-Finding Hearing, whether the exhibit will be marked for identification or moved into evidence, must be pre-marked and originals and sufficient copies for all parties shall be brought to the Fact-Finding Hearing. Petitioner's exhibits shall be numbered. Respondent's exhibits shall be lettered. Attorney for the Child exhibits will be designated AFC 1, 2, 3, etc. Motions in Limine shall be filed at least (2) two weeks prior to trial. Failure to timely file said motion may result in the preclusion of any such motions thereafter. Do not argue proof on the record and in front of the witnesses.

V. VIRTUAL PROCEEDINGS RULES

- A. General: All in-person court rules apply equally to virtual court proceedings.
- B. Recordings: No party or attorney may record any virtual court proceeding, including video, photographs and/or screenshots.
- C. Third-Party Presence: No individual may be physically present in the same room as a party or witness, except for counsel.
- D. Third-Party Communication: No party or witness may communicate with anyone in any manner while under oath during a virtual court proceeding.
- E. Attorney-Client Communication: Prior to engaging in any private communication with his/her client during a virtual court proceeding, counsel must first announce an intention to do so.
- F. Visibility: A witness and counsel must be visible on screen, while under oath during a virtual court proceeding, whether together in the same room or in separate physical locations.
- G. Electronic Devices: All electronic devices that are not being used to communicate with the Court must be placed on mute.
- H. Messaging: Counsel, parties and witnesses must be aware that all Teams messaging is public and permanent in that it is never erased.
- I. Documents:
 - a. Counsel wishing to place any document into evidence during a virtual appearance must exchange the document with opposing counsel and confer prior to the virtual hearing. Stipulated exhibits must be pre-marked into evidence. If the parties cannot stipulate a document into evidence, it must be marked for identification and exchanged.
 - b. Any counsel desiring to show any document on the screen during a hearing must request permission from the Court in advance.
 - c. Pre-marked copies of all documents stipulated into evidence to be displayed at the hearing shall be forwarded to the Court prior to the hearing. Documents objected to must also be marked for identification and forwarded to the Court prior to the hearing.